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In the Supreme Court

OF THE
United States

OCTOBER TERM, 1944

No.

J. R. MASON,

Petitioner,

VS.

EL DORADO IRRIGATION DISTRICT,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.**

*To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and to the Honorable Asso-
ciate Justices of the Supreme Court of the United
States:*

Your Petitioner, J. R. Mason, respectfully petitions this Court for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, to review an opinion of that Court affirming a final

decree of the District Court, issued without notice, and denying a motion to reverse the decree upon the constitutional grounds raised in the assignment of errors.

The decision of the Circuit Court of Appeals holds in effect: That the District Court, as a Court of Bankruptcy, has jurisdiction (a) of the borrowing power of a sovereign State, after that power has been exercised by the State; (b) of the duty to levy and collect direct taxes on certain land; (c) to deprive Petitioner, a *cestui que trust*, of vested rights as the owner and holder of valid and binding tax-secured general obligation bonds maturing 1951 to 1965 in violation of the contract clause.

Your Petitioner contends that a Federal Court was not given the authority to issue the decree producing the results complained of, by any act of the Congress, including 11 U.S.C.A. 401-404, under which this proceeding was initiated.

OPINION BELOW.

Opinion of the Circuit Court of Appeals, not yet reported, is shown in R. 31. The District Court opinion appears at R. 5-12.

JURISDICTION.

Decision by the Circuit Court of Appeals was rendered on June 20, 1944. (R. 31.) The mandate was

stayed until disposition of the case by this Court. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code. (28 U.S.C., Sec. 347(a).)

STATUTES INVOLVED.

Municipal Bankruptcy Act of May 24, 1934, c. 345 (48 Stat. 798), 11 U.S.C. 301-303, adding Sections 78-80 to the Bankruptcy Act of 1898; Act of August 16, 1937, c. 657 (50 Stat. 654), 11 U.S.C. 401-404, adding Sections 81-84; and Act of June 22, 1938, c. 575, Section 3(b) (52 Stat. 940). Principal California statutes are "the California Irrigation District Act of 1897", Cal. Stats. 1897, p. 254, as amended; Stats. 1903, p. 3, as amended; Stats. 1929, p. 689; Stats. 1931, p. 1955.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a composition proceeding, initiated by the Respondent under the provisions of Chapter IX of the Bankruptcy Act of 1898, as amended. (11 U.S.C.A. Secs. 401-404.) The trial Court rendered a final decree without notice, "cancelling, annulling and holding for naught" the bonds owned by Petitioner, and its decision was affirmed by the Court below, with one unimportant modification. (R. 35.) This appeal is taken from the final decree.

By proper specification of error and statement of points, Petitioner J. R. Mason sought a reversal of the decree. (R. 16-26.)

Respondent, El Dorado Irrigation District, is an agent and instrumentality of the State of California, performing governmental functions, exclusively, with its powers and duties prescribed in California Statutes 1897, p. 254, and amendments thereto. Among the powers delegated by the State to Respondent is the State's power to borrow money to finance the cost of self-liquidating public improvements by the issuance of general obligation bonds secured by mandate to annually levy direct taxes on the value of land within the district, both urban and rural, without limitation as to rate or time or benefits received, until lawful obligations are fulfilled. Also to administer lands escheating for unpaid district taxes, as a beneficent landlord, and to collect the "rents, issues and profits" from such land for "all the uses and purposes of the act", which purposes include the payment of obligations.

In the exercise of the State's borrowing power delegated to Respondent, the electors voted \$1,300,000 bonds in 1927, of which \$600,000 maturing 1948 to 1967 were issued and sold, bearing 6% interest. The bonds are not redeemable or callable before maturity. It is not denied that the irrigation system and water rights acquired with the money borrowed from Petitioner was constructed, that the district is actually using them, that the district was authorized to construct them, and that the labor and materials for which payment has not been made were furnished in good faith and have not been paid for. It is not denied that the sovereign power of the State to borrow

money and to tax land are delegated to Respondent, and that those State powers were exercised when the bonds owned by Petitioner were issued as negotiable instruments, subject to the contract clause.

Although bitterly denounced and attacked, ever since Mr. Geo. H. Maxwell argued before this Court in the *Fallbrook Irrigation District v. Bradley* cause (164 U.S. 112), that this California statute is "Communism and confiscation under guise of law", it has been copied as the model law by most of the other western States, and has always operated to exert economic pressure on the large, absentee landholders to put land to its best use, or to let go of it at a figure that small holders were willing to pay. The amendment to this law, Stats. 1909, p. 461, permitting the abatement from taxation of buildings, planted orchards and other improvements has now become an integral part of the law, Stats. 1931, p. 233. All land within each district is assessed for purposes of taxation at its "full cash value", and is subject to *ad valorem* taxation, annually without limitation as to tax rate, to meet the district's costs of operation and obligations. Land monopolists and speculators, because of their quite unanimous disapproval of it, have never ceased in their efforts to have the law ruled unconstitutional, or to discover some way to circumvent it. They know the high rent that farm workers are willing to pay for the privilege of laboring on California irrigated land, and they also know that they can not shift to a tenant, any taxes they are compelled to pay to the districts that levy taxes under

this law. All economists now recognize that such taxes tend to keep down the price demanded for land titles, and that they can not increase living costs. This Court in the *Pollock v. Farmers L. & T. Co.*, 158 U.S. 601, case reached the conclusion that such taxes are "direct", and therefore may not be levied by Congress except subject to the regulation of apportionment. But if the final decree below stand, Congress will have released land from direct taxes lawfully payable by its holders to the State. Such will be the sole effect of annulling the bonds at bar, both from the legal and practical standpoints.

The pith of the conflict here is whether real property, and its "rent, issues and profits" are exclusively subject to the law of the sovereign State in which it is situated, as declared in 11 *Am. Jur.*, Conflict of Laws, Section 30, or whether such property rights may be "cancelled, annulled and held for naught" by a simple statute of the federal government, taking them from A and giving them to B.

It will not be denied that it is wholly *ultra vires* the Congress to authorize its Courts to issue any order that would result in increasing State taxes on land, unless clearly authorized by State law. (*Heine v. Board*, 19 Wall. 655.)

The final decree, as here applied does take from Petitioner and give to others, his vested rights in the "rents, issues and profits" in and to all the land, both urban and rural within the taxable boundaries of respondent, by condemning his bonds to death. The result of this decree, if it stand, can only be to in-

crease the net rent, after taxes remaining to be pocketed by the nontaxpaying land-title holders. The rental value of these lands will not and can not be increased nor decreased by any legislation or Court order. Only the net rent, after taxes can be capitalized by taxpayers into price for a land title. This is always "unearned increment".

The applicable State laws creating the powers and duties of Respondent and the property rights of Petitioner as a holder of the bonds at bar are in full force and effect. In the absence of violation of a federal statute, the Courts give full faith and credit to the taxing statutes of sovereign States, especially when, as in this case a failure to do so constitutes taking property in violation of the contract clause. The applicable State laws have neither been nullified nor superseded as valid existing laws, and Section 83(c) and (i) explicitly prohibit the Court issuing any order that "interferes" with their full force and effect.

Spellings v. Dewey, 122 Fed. (2d) 652 (C.C.A. 8).

QUESTIONS PRESENTED.

(1) Whether the sovereign power of a State to borrow money when exercised, is immune from the bankruptcy clause.

(2) Whether the final decree, as applied, "interferes" with the pledge made by the State to exercise its taxing power in favor of Petitioner, as a *cestui que trust*, according to the terms of the bonds and the law

authorizing respondent to borrow the funds taken from Petitioner by the final decree.

(3) Whether the issuance of the final decree without notice was proper.

(4) Whether the final decree deprives Petitioner of property in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

REASONS RELIED ON FOR ISSUANCE OF THE WRIT.

(a) The decision of the Court of Appeals that a Federal Court, as a Court of Bankruptcy, has the power to issue decrees operating on the receipts from municipal bonds, or on the power of the States, and their instrumentalities to borrow money, is contrary to the applicable decisions of this Court.

(b) The Circuit Court of Appeals has sanctioned such a departure by the District Court from the most settled habits in the relationship between the States and Nation as to call for an exercise of this Court's power of supervision.

(c) The decision below is in direct conflict with that of another circuit, *infra*, page 16. (*In re Stilwell*, 120 F. (2d) 194.)

PRAYER.

Wherefore your Petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the

Ninth Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record in the proceedings of that Court in *J. R. Mason v. El Dorado Irrigation District*, No. 10,541, to the end that this case may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment of the United States Circuit Court of Appeals be reversed by this Court, and for such further relief as to the Court may seem proper.

Dated, San Francisco, California,
August 23, 1944.

J. R. MASON,
Petitioner in Propria Persona.